

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS

In Re)
) In Bankruptcy
JOHN A. LOVEKAMP and)
FRANCES J. LOVEKAMP,) Case No. 03-71168
)
Debtors.)

OPINION

This proceeding is before the Court on the Motion by The First National Bank in Taylorville for Reconsideration of the Court's Order of December 11, 2003 Pursuant to Federal Rule of Civil Procedure 59(e).

Rule 59(e) motions serve a narrow purpose and must clearly establish either a manifest error of law or fact, or must present newly discovered evidence. Moro v. Shell Oil Co., 91 F.3d 872, 876 (7th Cir. 1996); Federal Deposit Ins. Corp. v. Meyer, 781 F.2d 1260, 1268 (7th Cir. 1986). Rule 59 allows a court to correct its own mistakes, thereby sparing the parties and the appellate courts the burden of unnecessary appellate proceedings. Russell v. Delco Remy Division of General Motors Corp., 51 F.3d 746, 749 (7th Cir. 1995) (citation omitted). The function of a motion to alter or amend a judgment is not to serve as a vehicle to re-litigate old matters or present the case under a new legal theory. Moro v. Shell Oil Co., *supra*, 91 F.3d at 876 (citation omitted). The purpose of such a motion is not to give the moving party another

bite at the apple. In re BNT Terminals, Inc., 125 B.R. 963, 977 (Bankr. N.D. Ill. 1990) (citations omitted). The rulings of a bankruptcy court "are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure." See Quaker Alloy Casting Co. v. Gulfco Industries, Inc., 123 F.R.D. 282, 288 (N.D. Ill. 1988). "A motion brought under Rule 59(e) is not a procedural folly to be filed by a losing party who simply disagrees with the decision." In re BNT Terminals, Inc., *supra*, 125 B.R. at 977. The decision to grant or deny a Rule 59(e) motion is within the Court's discretion. See LB Credit Corp. v. Resolution Trust Corp., 49 F.3d 1263, 1267 (7th Cir. 1995).

The Bank objects to the inclusion of certain language in the Court's Order of December 11, 2003. The language that the Bank finds objectionable has to do with the Debtor's testimony that all of the grain proceeds went through the Debtor's account at the Bank. The language quoted by the Bank does not appear anywhere in the Court's Order of December 11, 2003. This objection is frivolous and without merit.

Next, the Bank submits Bank records to demonstrate that the Debtors did not deposit any money in their account at the Bank after January 8, 2003. These records clearly do not qualify as newly-discovered evidence. These records should have been used to impeach the Debtors at trial; a Motion for Reconsideration is not a vehicle by which to introduce documents that were in the Bank's possession and control at the time of trial.

The Bank next argues that it should be paid over \$40,000 from the 2002 grain sales. The basis for this objection is unclear. The 2002 grain has all been sold, so there is no security interest in existing proceeds. The Bank did not file a timely nondischargeability complaint, so there is no nondischargeable claim. The Bank and the Debtors agreed to the values of the Bank's secured property - real estate in Pawnee, 1993 Western State semi-truck, machinery and equipment - and the Debtor's Second Amended Plan provides for the payment of these values. The balance of the Bank's claim will be paid with the other unsecured claims.

The Bank continues to insist that the Debtors defrauded the Bank and the Court. The Court rejected this argument at trial, and the Court continues to reject it. The evidence did not show that the Debtors intended to defraud the Bank. There was no evidence that the Debtors tried to hide what they did with the 2002 grain proceeds; what happened with the 2002 grain proceeds was consistent with the normal relationship between the Bank and the Debtors. The Debtors used the 2002 grain proceeds to maintain their farming operation by repairing equipment and buildings, paying for necessary crop inputs, and paying rent to their landlord. Moreover, the Bank received \$103,000 from the Debtors.

Finally, the Bank argues that the Court erred as a matter of law by denying its Motion to Extend Deadline to File Objection to Dischargeability of Certain Debts. The deadline to file dischargeability complaints was June 23, 2003. The Bank filed its

Motion to Extend Time on December 4, 2003. The law is clear that the time for filing a complaint to determine dischargeability of debt cannot be extended if the motion for extension is made after the bar date set forth in Bankruptcy Rule 4007(c). In re O'Shaughnessy, 252 B.R. 722 (Bankr. N.D. Ill. 2000).

The Bank argues that the Seventh Circuit's recent decision in In re Kontrick, 295 F.3d 724 (7th Cir. 2002), *cert. granted*, ___ U.S. ___ (2003) permits the Court to allow an extension after to bar date. The Court disagrees. In Kontrick, the Court found that the debtor waived any objection to the timeliness of an objection to discharge complaint by not raising it at the proper time. The Debtors in this proceeding objected to the Motion for Extension of Time almost as soon as it was filed.

For the foregoing reasons, the Bank's Motion for Reconsideration is denied.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: January 16, 2004

LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE

c: Edward Q. Costa
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CERTIFICATION OF MAILING

The undersigned, deputy clerk of the United States Bankruptcy Court, hereby certifies that a copy of this Opinion was mailed this date to the parties listed herein.

Dated: January 16, 2004

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For the reasons set forth in an Opinion entered this day,

IT IS HEREBY ORDERED that the Motion by The First National Bank in Taylorville for Reconsideration of the Court's Order of December 11, 2003 Pursuant to Federal Rule of Civil Procedure 59(e) be and is hereby denied.

LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE

John S. Narmont
209 Bruns Lane
Springfield, IL 62702

U.S. Trustee
401 Main St. #1100
Peoria, IL 61602

The undersigned, deputy clerk of the United States Bankruptcy Court, hereby certifies that a copy of this Order was mailed this date to the parties listed herein.

Dated: January 16, 2004